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GOVERNMENT OF KERALA

Industries (D) Department

NOTIFICATION

G. O. MS. 153/74/ID. *Dated, Trivandrum, 29th July, 1974.*

THE KERALA CASHEW FACTORIES (ACQUISITION) RULES, 1974

S.R.O. No. 547|74.—In exercise of the powers conferred by sub-section (1) of Section 16 of the Kerala Cashew Factories (Acquisition) Ordinance, 1974 (8 of 1974), the Government of Kerala hereby make the following rules, namely:—

RULES

1. *Short title and commencement.*—(i) These rules may be called the Kerala Cashew Factories (Acquisition) Rules, 1974.

(ii) They shall come into force on the date of their publication in the Gazette.

2. *Definitions.*—In these rules, unless the context otherwise requires,—

(a) "Form" means a form appended to these rules;

(b) "Ordinance" means The Kerala Cashew Factories (Acquisition) Ordinance, 1974 (8 of 1974);

(c) "Schedule" means the schedule to the Ordinance;

(d) "Section" means a section of the Ordinance;

(e) "State" means the State of Kerala.

3. *Notice of intention to take action under section 3 (1).*—The Government may, on receipt of information,—

(a) that the occupier of a cashew factory does not conform to the provisions of law relating to safety, conditions of service or fixation and payment of wages to the workers of the factory; or

(b) that raw cashewnuts allotted to a cashew factory by the Cashew Corporation of India are not being processed in the factory to which allotment has been made or that such nuts are being transferred to any other cashew factory; or

(c) that there has been large scale unemployment, other than by way of lay off or retrenchment, of the workers of a cashew factory, give the occupier of the factory and the owner of the factory where he is not the occupier a notice of their intention to take action under sub-section (1) of section 3.

(2) The notice under sub-rule (1) shall be in Form I.

4. *Orders on objections.*—The Government shall, after considering the objections, if any, raised by the owner or occupier of the factory or other interested persons in pursuance of the notice issued under rule 3, and after hearing the persons who have appeared in pursuance of such notice, pass appropriate orders. Such orders shall be communicated to the occupier, the owner where he is not the occupier and to all persons who have raised objections or have been heard in pursuance of such notice.

5. *Order under section 3 (1) to specify the date of vesting.*—The order under sub-section (1) of section 3 shall specify the date (not being earlier than the date of publication of the Order in the Gazette) on which the cashew factory shall stand transferred to, and vest in, the Government.

6. *Preparation of inventory.*—The officer authorised in this behalf by the Government under section 5 shall prepare the inventory under the said section in the presence of the occupier of the factory and the owner of the factory where he is not the occupier, after issue of notice in Form II. If such occupier or owner refuses to be present, the inventory may be prepared in the presence of any two persons of the locality.

7. *Notice to deliver possession of properties and documents.*—The officer authorised to take possession of the properties and documents of a cashew factory vested in the Government shall

issue a notice in Form III to the occupier, to the owner, where he is not the occupier and to all other persons in whose possession or custody or under whose control such properties and documents may be, for the delivery of such properties and documents.

8. *Preparation of list of properties and documents when they are delivered.*—If the properties and documents are delivered in pursuance of the notice under rule 7, a complete list of all such properties and documents shall forthwith be prepared by the officer empowered to take delivery of the same and it shall be signed by the person or persons delivering the properties and also the officer who takes possession of them.

9. *Taking possession of properties and documents in case of refusal to deliver.*—If the person in whose possession or custody or under whose control the properties and documents may be, refuses to deliver the properties and documents at the time and place stipulated in the notice under rule 7, the officer mentioned in the notice shall take possession of the properties and documents with such assistance as he considers necessary and shall prepare a complete list of all such properties in the presence of two persons of the locality.

10. *Taking possession of properties and documents by force.*—(1) If the person in whose possession or custody or under whose control the properties and documents may be, refuses to deliver the properties and documents to the officer mentioned in the notice and if such officer deems it necessary to secure possession of the property by use of force, he shall issue a request in Form IV to the officer-in-charge of the police station in whose jurisdiction such properties and documents may be.

(2) On receipt of such request, the officer-in-charge of the police station shall render all necessary assistance to the officer for securing possession of the properties and documents.

(3) After securing possession of the properties and documents under this rule, the officer shall prepare a complete list of such properties and documents in the presence of two persons of the locality.

11. *Principles for determining value of land.*—In calculating the value of land for the purpose of determining the amount payable under section 9, the District Collector shall, so far as may be, follow the procedure laid down in the Kerala Land Acquisition Act, 1961 (Act 21 of 1962).

12. *Mode of determining value of buildings.*—The District Collector may get the buildings valued in accordance with the

principles specified in the Schedule by an officer of the Public Works Department not below the rank of Executive Engineer.

13. *Mode of determining value of machinery:*—The District Collector may get the machinery valued in accordance with the principles specified in the Schedule by an officer of the Public Works Department not below the rank of Executive Engineer or by an officer of the Industries Department not below the rank of District Industries Officer.

14. *Opportunity to adduce evidence against valuation:*—Before finalising the amount payable for the acquisition of a cashew factory, the District Collector shall give an opportunity to the occupier of the factory and the owner of the factory where he is not the occupier to adduce evidence regarding the valuation of the factory and their claims for receiving the amount. A notice in Form V shall be issued in this behalf by the District Collector to such occupier and owner and the same shall also be published in two news papers published in the State and having circulation in the locality.

15. *Reference to District Court:*—If any person other than the occupier of the factory, either in pursuance of the notice published under rule 14 or otherwise claims to be entitled to receive the whole or any part of the amount payable for the factory under section 9 and if such claims is received on or before the date specified in the said notice, the District Collector shall refer the matter to the District Court under sub-section (3) of section 9 and give notice of the fact to the parties concerned in Form VI.

16. *Form of reference, etc.*—(1) A reference under rule 15 shall be made in Form VII within a period of six weeks from the date specified in the notice under rule 14 and shall be accompanied by the following documents, namely:—

(a) the award of the District Collector in regard to valuation of land;

(b) the valuation certificates in respect of buildings and machinery together with the reasons for such valuation;

(c) seven copies of the notice under rule 14 as served on the parties and as published in the newspapers;

(d) evidence adduced by or objections preferred by the occupier, owner and other persons;

(e) a note stating the reasons for the reference and showing the location and details of land, building, machinery and other

materials and a list of persons claiming interest in the factory, and the nature of their interest;

(f) names and addresses of creditors of the occupier and the owner where he is not the occupier and the nature of the claims of each creditor;

(g) such other documents as the District Collector may deem relevant.

(2) If the reference is made for determining the amount payable under sub-section (1) of section 9, the District Collector shall also forward to the District Court a note on the basis of which he arrived at the amount payable for the factory along with copies of documentary evidence relived upon by him for arriving at the amount.

17. *Procedure of District Court.*—In deciding disputes and apportioning the amount among the claimants in pursuance of a reference under the Ordinance, the District Court shall, so far as may be, follow the procedure prescribed in the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

18. *Procedure where only one person claims the amount.*—If there is only one person who claims the amount and such person has not adduced evidence or preferred objections to the valuation of the cashew factory, the District Collector shall determine the amount and give notice in Form VIII to the person entitled to receive the amount, mentioning the amount fixed by him separately for land, buildings, and machinery and requiring the person to receive the amount within the date specified in the notice.

19. *Reference to District Court where the sole claimant disputes adequacy of amount.*—If the person entitled to receive the amount disputes the adequacy of the amount determined by the District Collector, he shall give intimation of the same to the District Collector within fifteen days of the receipt of the notice under rule 18 and thereupon the District Collector shall refer the matter to the District Court under sub-section (3) of section 9.

(2) The provisions of rules 16 and 17 shall so far as may be, apply to a reference under sub-rule (1) of this rule.

20. *Corporation to re-imburse amounts paid under section 9.*—Where a cashew factory is vested in the Corporation under section 8, the amount paid by the Government under section 9, shall be reimbursed to the Government by the Corporation.

21. *Preparation of list of workmen.*—As soon as the inventory of properties under section 5 is prepared, the officer authorised

by the Government to prepare the inventory shall also prepare a list of workmen mentioned in sub-section (1) of section 10 and shall publish a copy of such list in the premises of the factory immediately after taking possession of the properties of the factory under section 7.

22. *Objections to the list prepared under rule 21.*—(1) If any person disputes the correctness of the list published under rule 21, he shall file his objections or claims before the Collector of the district in which the factory is situate within seven days after the publication of the list. The District Collector shall give the person who files the objections or claims an opportunity to present his case and after considering such other evidence as he may deem relevant take a decision on the objections or claims.

(2) The list published under rule 21 shall be corrected in accordance with the decision under sub-rule (1).

23. *Money in provident fund how to be dealt with.*—Any amount vested in the Government or the Corporation under the provisions of sub-section (1) of section 11 shall be invested by the Government or the Corporation, as the case may be, in the provident fund, for the benefit of the respective employees of the factory, if a provident fund has been established by the Government or the Corporation in respect of the employees of such factory. In the absence of such provident fund, the amount may be invested by the Government or the Corporation, as the case may be, with the consent of the respective employees, in any other fund that has been established by the Government or the Corporation for the benefit of the employees of that factory or may be dealt with under the provisions of the Employee's Provident Fund and Family Pension Fund Act, 1952 or any other law for the time being in force which provides for the establishment of a fund for the benefit of the employees.

24. *Authorisation of officers to inspect cashew factories.*—(1) The Government may authorise any officer to inspect any cashew factory in the State with a view to verify whether—

(a) the occupier of the cashew factory conforms to the provisions of law relating to safety, conditions of service or fixation and payment of wages to the workers of the factory; or

(b) the raw cashewnuts allotted to the cashew factory by the Cashew Corporation of India are being processed in the factory to which allotment has been made or whether such nuts are being transferred to any other cashew factory ; or

(c) there has been large scale unemployment, other than by way of lay off or retrenchment, of the workers of a cashew factory.

(2) Any officer authorised under sub-rule (1) shall have power to call for from any person or institution records or other documents relating to the cashew factory, which he may consider relevant or necessary for any inspection he may conduct under this rule.

FORM I

Notice under rule 3 of the Kerala Cashew Factories (Acquisition) Rules, 1974.

WHEREAS it has been brought to the notice of the Government that in respect of cashew factory..........(Registration No. of the factory ...... located in ...... Village, ... Taluk, ... District of which .... is the owner and .... is the occupier there exist grounds as detailed below, warranting action under section 3 (1) of the Kerala Cashew Factories (Acquisition) Ordinance, 1974, notice is hereby given to all concerned of the intention of the Government to take action under the above said section of the Ordinance. Interested persons are hereby directed to file their objections, if any, before the Government of Kerala against the proposed action within seven days of the receipt of this notice or the publication of this notice in the news papers, whichever is earlier or if they so desire, appear before the........at........ on..........and state their objections. If no objections are received within the said period or no person appears on the said date it will be presumed that there are no objections against the proposed action and further steps will be taken.

All concerned are further informed that..........(designation and address of the officer)..........has been authorised to prepare an inventory of all properties of the cashew factory mentioned above under section 5 (1) of the Ordinance. They are also informed that commission of any act by any person which will diminish the value of the properties and assets of the cashew factory or the removal of any property or assets from the premises of the factory is punishable under section 13 of the Ordinance.

Grounds

By order of the Governor,

Place :

Date :

Secretary to Government,
Industries Department.

FORM II

NOTICE UNDER RULE 6 OF THE KERALA CASHEW FACTORIES (ACQUISITION) RULES, 1974.

WHEREAS as per reference No.........Government have authorised the undersigned under section 5 (1) of the Kerala Cashew Factories (Acquisition) Ordinance, 1974 to prepare a complete inventory of all the properties of cashew factory (Registration No.)..........located in..........Village, ...Taluk,........District and whereas notice under the proviso to section 3(1) of the Ordinance has been served on you/published in....daily/dailies on ...(date/dates) you are hereby informed that an inventory of all the properties of the above said cashew factory will be prepared at the factory premises at ......(time) on......(date). You are requested to be present at the place and time mentioned above and render all assistance for the preparation of a complete inventory of all the properties of the cashew factory. You are also requested to furnish to the undersigned on the above date a complete list of all the persons employed in the factory, who are workmen within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) as on......date.

Place: *Name and Designation of the Officer.*
Date:

FORM III

NOTICE UNDER RULE 7 OF KERALA CASHEW FACTORIES (ACQUISITION) RULES, 1974.

WHEREAS the Government in their Order No...........published in the Kerala Gazette dated..........have declared that Cashew Factory (Registration No.)..........located........Village,......Taluk,........ District, shall stand transferred to, and vest, in the Government under section 3 (1) of the Kerala Cashew Factories (Acquisition) Ordinanee, 1974, and whereas the Government have authorised the undersigned to take possession of all the properties and documents vested in the Government under the above order, you are hereby requested to deliver all such properties and documents to the undersigned at......(place) at......(time) on........(date).

You are also informed that in case you fail to deliver the properties to the undersigned, action will be taken to secure possession of the properties, if necessary by use of force, and you will be liable for all the consequences.

Place: *Name and Designation of Officer.*
Date:

FORM IV

(*See* rule 10)

To

The Sub Inspector of Police,

............Police Station.

WHEREAS under section 3 (1) of the Kerala Cashew Factories (Acquisition) Ordinance, 1974 Government of Kerala have declared that Cashew Factory No.......located in......Village,......Taluk,......District shall stand transferred to, and vest in the Government and whereas the Government have authorised the undersigned to take possession of the properties and documents so vested in the Government and whereas......(name of the occupier and/or owner)......in whose possession or custody or control the properties/documents remain, has refused to deliver the property/documents to the undersigned inspite of due notice and whereas it is felt that use of force may become necessary for securing possession of the properties/documents you are hereby requested to render all necessary assistance to the undersigned to secure possession of the above said properties/documents at......(place) at......(time) on......(date).

Place: *Name and Designation of the Officer.*

Date:

FORM V

NOTICE UNDER RULE 14 OF THE KERALA CASHEW FACTORIES (ACQUISITION) RULES, 1974

Notice is hereby given that the Government of Kerala have taken over the cashew factory......(registration No.)......located in...... Village, ...Taluk,............District, with all its properties. All persons interested in the cashew factory and its properties are required to appear in person or by authorised agent before me at......(time) on...... (date) at......(place) and to state/put in a statement in writing signed by themselves or their agents showing the nature of their respective interest in the factory or its properties, the amount and particulars of their claims for such interest and to put in a statement containing, so far as may be practicable, the name of every other person possessing any interest in the factory or its properties and the nature of such interest.

Place: *District Collector.*

Date:

FORM VI

(*See* RULE 15)

Notice is hereby given to you that a reference under section 9 (3) of the Kerala Cashew Factories (Acquisition) Ordinance, 1974, has been made to the Court of the District Judge at......................as per this office reference..........................dated.................. for determining the amount payable for cashew factory (Registration No........... located in...............Village,.............Taluk,................ District, in which you claim to be interested as.......................... (occupier, owner etc.)...............................

Place:
Date:

District Collector

FORM VII

(*See* RULE 16)

Form of reference to Court

In the Court of the District Judge of................................
Reference made under section 9(3) of the Kerala Cashew Factories (Acquisition) ordinance, 1974.

By whom referred:......................... (name and designation of the officer referring)...

No. and date of reference: Registration Number of the Factory......

I. Particulars of Cashew Factory in respect of which the reference is made	1. Land:	(a) Survey Number, village and Taluk: (b) Extent: (c) Amount awarded:
	2. Buildings:	(a) Description: (b) Amount awarded:
	3. Machinery, Plant and other equipments:	(a) Description: (b) Amount awarded:
	4. Other materials	(a) Description: (b) Amount awarded:
	5. Total amount awarded:	

II. Persons interested:	Name and address:	Nature of interest as claimed by the person:
(a)	....	....
(b)	....	....
(c)	....	....

III. Reasons for reference.

IV. List of documents enclosed:

(1)

(2)

A note under rule 16(2) of the rules is enclosed.

District Collector

FORM VIII

[NOTICE UNDER RULE 18 OF THE KERALA CASHEW FACTORIES (ACQUISITION) RULES, 1974]

Ref. No...........................

Award made by.. under section 9(1) of the Kerala Cashew Factories (Acquisition) Ordinance, 1974.

Whereas the cashew factory......................(Registration No.(......................situated in the Village of...................... Taluk,......................District occupied or owned by the person specified below, with all the properties attached to it, stand transferred to, and vested in, the Government of Kerala as declared by the Government in Order No...................published at page..................of the Gazette, Part...................dated................the undersigned, after full inquiry into the case and on due consideration of the various circumstances relevant to the case as required under section 9 of the Ordinance, makes the following award under his hand:—

(i) the area of the land occupied by the factory at the time of establishment of the factory is............................

(ii) The value awarded for the above land being the value of the land at the time of establishment of the factory, is Rs...........

(iii) The area of land acquired by the owner or occupier for the purpose of the factory subsequent to the establishment of the factory is..............................

(iv) The value awarded for the above land, being the value of the land at the time of acquisition, is Rs........................

(v) The cost of the buildings at the time of construction, minus depreciation at 5% subject to a maximum of 50% depreciation, is Rs........................

(vi) The actual cost of plant, machinery and other equipment which has not been worked or used and the written down value (determined in accordance with the provisions of the Income Tax Act, 1961) of any other plant, machinery or other equipment, subject to a minimum of 25 per cent of the actual cost of acquiring such plant, machinery or other equipment is Rs........................

(vii) The value of other materials not included under the above items is Rs. ....

The total amount payable for the cashew factory [total of (i) to (vii)] is Rs..............................

You are hereby informed that you should either appear in person or by an authorised agent before the undersigned on or before.................. (date) at..............................(place) and receive the amount you are entitled to get, failing which the said amount of money will be kept in Revenue Deposit and will bear no interest.

Place:

Date: *District Collector*

By order of the Governor,

K. Narayanan,

Special Secretary to Government.

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